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IN THE

Supreme Court of the United States

OCTOBER, 1947, TERM,

No. .....

BEN SAMETT, Petitioner

vs.

RECONSTRUCTION FINANCE CORPORATION.

PETITION FOR REVIEW ON WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT,

AND SUPPORTING BRIEF.

Comes now your petitioner, Ben Samett, by his attorney, Fred S. Caldwell, and requests this Honorable Court to review on writ of certiorari the judgment of the United States Circuit Court of Appeals, Tenth Circuit, rendered in Case No. 3563, Ben Samett, Appellant, vs. Reconstruction Finance Corporation, Appellee, on December 17, 1947, which said judgment became final on January 15, 1948, when appellant's petition for rehearing was denied.

STATEMENT OF MATTER INVOLVED.

On May 1, 1947, Ben Samett instituted in the United States District Court for Colorado a class action against Reconstruction Finance Corporation. It was alleged in the complaint that plaintiff was engaged in the business of slaughtering livestock; that he was a resident of Denver, Colorado, and that his place of business was in that city; that there was due him a balance of $22,660.00 on accrued and vested subsidies; that in like manner large balances on accrued and vested subsidies were due other slaughterers of livestock throughout the country; that acting under the pretended authority of Economic Stabilization Directive No. 41, as amended, and certain regulations promulgated by the Reconstruction Finance Corporation pursuant to the mandate of said Directive No. 41, payment of the respective amounts due had been refused; and that such directive and said regulations promulgated pursuant to the mandate thereof, in their application to the business of the plaintiff and to the businesses of others similarly situated, undertook to lay forfeitures and penalties in addition to those prescribed by Congress, and were unlawful, illegal, and void. A declaratory judgement was sought determining and adjudicating that said Directive No. 41 and the regulations promulgated pursuant to the mandate thereof were illegal, null, and void; awarding plaintiff judgment against defendant Reconstruction Finance Corporation in the sum of $22, 660.00, with damages for the wrongful withholding of said sum; awarding like recovery in the respective amounts due others similarly situated who should elect to join plaintiff and participate in the prosecution of the action; and declaring the several judgments to be a lien upon all subsidy moneys appropriated by Congress and placed under the control of the defendant Reconstruction Finance Corporation for the payment of meat subsidies. The trial court dismissed the action for lack of jurisdiction, upon the ground that by Section 204 of the Emergency Price Control Act, 56 Stat. 23, 50 U.S.C.A., Appendix Sec. 901, et seq., exclusive jurisdiction of the subject matter of the action remained vested in the Emergency Court of Appeals, not-

withstanding the 1944 amendment, as set forth in Section 2(m) of the Emergency Price Control Act of 1942, as amended, 58 Stat. 36. On appeal to the United States Circuit Court of Appeals, Tenth Circuit, the judgment of the trial court was by a vote of two to one of the Circuit Judges affirmed. Petitioner claims that Section 2(m) did vest the district court with jurisdiction of his claim and that the lower court erred in holding otherwise.

QUESTIONS PRESENTED FOR REVIEW

Petitioner specifically brings forward for consideration upon review of the decision of the lower court the following questions, designated Points 1 to 6, respectively:

POINT 1. The decision of the lower court violates the rule that where the language of a statute is clear and unambiguous it is conclusive, and there is no occasion for the invocation of any aids, such as rules of construction, for the ascertainment of the legislative intent. In such case, Congress must be presumed to mean what it has plainly said.

POINT 2. The decision of the lower court violates the rule that the general terms of a prior statute are not to be considered as covering the particular terms of a subsequent special statute, even though the two are parts of the same Act or are otherwise so related in subject-matter that they must be construed in *pari materia;* but, on the contrary, the terms of the later statute are to be considered as withdrawing this subject-matter from the operation of the former statute.

POINT 3. The decision of the lower court violates the rule that where a statute provides a new, specific and complete remedy fully covering the subject-matter, its provisions will alone be looked to, and resort cannot be had to prior existing general remedies.

POINT 4. The decision of the lower court gives no meaning to the word "lawful" as used in section 2(m) of the Emergency Price Control Act of 1942, as amended.

POINT 5. The decision of the lower court, when construed with the conflicting decisions of the Emergency Court of Appeals in *Standard Kosher Poultry, Inc., v. Clark,* 163 Fed. (2d) 430, and *Talbot v. Woods,* 164 Fed. (2d) 493, denies petitioner due process of law, in violation of the Fifth Amendment.

POINT 6. The decision of the lower court is contrary to law in holding that the Emergency Court of Appeals was vested with jurisdiction of claims arising under subparagraphs (1), (2), (3), (4), (5), and (6) of Section 7(e) of Office of Economic Stabilization Directive No. 41, as amended, and those parts of Reconstruction Finance Corporation's Revised Regulation No. 3 and amendments thereto, implementing the same, and specified by section numbers in paragraph 8 of the complaint (R. 4), because these are quota and distribution regulations predicated on the Second War Powers Act 50 U.S.C.A., Appendix Section 631 et seq. and are not price regulations promulgated under Section 2 of the Emergency Price Control Act, as amended.

SUPREME COURT'S JURISDICTION TO REVIEW ON CERTIORARI.

Jurisdiction to grant this petition for certiorari is conferred by Section 347, Title 28, of the United States Code Annotated (Judicial Code Section 240, as amended). And pursuant to Rule 38 and in recognition of the limitations imposed by the well settled practice that: "The jurisdiction to bring up cases by certiorari from the Circuit Court of Appeals was given for two purposes: first, to secure uniformity of decision between those courts in the ten circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort" *(Magnum Import Company v. Francois Joseph De Spoturno Coty,* 262 U. S. 159, 163; 67 L. Ed. 922, 924), your petitioner presents the following special and important reasons for granting this petition for the writ.

(1) The majority opinion of the Tenth Circuit in the instant case holds that "The action was within the scope and meaning of Section 204 (a) and (d); and under the

law existing at the time of the institution of the action (May 1, 1947) and at the time of its dismissal (July 23, 1947) only the Emergency Court of Appeals had original jurisdiction to entertain it." This is in direct conflict with the decision of the Emergency Court of Appeals in *Standard Kosher Poultry, Inc. v. Clark*, 163 Fed. (2d) 430, wherein, as pointed out by Judge Phillips in his dissenting opinion in the instant case, it was held that after the expiration of the Emergency Price Control Act on June 30, 1947, the jurisdiction of that court to pass on the validity of regulations "was limited to civil and criminal enforcement proceedings predicated upon past violations alleged to have been committed while the regulation was in effect." The instant case does not involve a civil or crimina enforcement proceeding of any sort whatsoever. Therefore, according to this decision of the Emergency Court of Appeals, since June 30, 1947, it has had no jurisdiction over such action. *Standard Kosher Poultry, Inc., v. Clark, supra,* was reaffirmed and followed by the Emergency Court of Appeals in *Talbot v. Woods,* 164 Fed. (2d) 493, in these words:

> "As we said in Standard Kosher Poultry, Inc., v. Clark, E.C.A. 1947, 163 F. 2d 430, § *1(b) obviously refers to civil and criminal enforcement proceedings predicated upon past violations alleged to have been committed while the Act and regulations thereunder were still in effect, and preserves the ancillary jurisdiction of the Emergency Court of Appeals, under §204(a) and §204(b) of the Act, to determine the validity of any provision of a regulation or order upon which such enforcement proceedings are predicated.* Since complainant claims to have obeyed the Rent Director's order from the date of its issuance, and nothing to the contrary appears, no question remains as to any 'offense' committed or any 'liability' incurred by violation of the order while it was in effect, or as to any 'right' to treble damages on account of such violation. *The case therefore does not fall within the saving clause of § 1(b)".* Emphasis supplied.)

(2) Petitioner's complaint in the instant case not only attacked the validity of certain price regulations (Section 7(b) (1), (2), (3), (4), and (5), of Economic Stabilization Directive No. 41, as amended, and the corresponding regulations promulgated by the Reconstruction Finance Corporation pursuant to the mandate thereof); but it also attacked the validity of certain quota and distribution regulations (Section 7(e) (1), (2), (3), (4), (5), and (6) of the Office of Economic Stabilization Directive No. 41, as amended, and the corresponding regulations promulgated by the Reconstruction Finance Corporation pursuant to the mandate there). Since quota and distribution regulations were in no sense price regulations predicated upon the authority conferred by Section 2 of the Emergency Price Control Act of 1942, as amended, but were rationing and distribution regulations predicated upon the authority conferred by the Second War Powers Act, 50 U.S.C.A., Appendix, Section 631, et seq., the Emergency Court of Appeals never had jurisdiction to review the same. In holding that the Emergency Court of Appeals has exclusive jurisdiction to review such rationing and distribution regulations, the decision of the Tenth Circuit in the instant case is in conflict with the decision of the Emergency Court of Appeals in *Oswald & Hess Co. v. Bowles,* 148 Fed. (2nd) 543, wherein it was said:

> "Furthermore, complainant insists that the regulation is discriminatory against the group of slaughterers who, like complainant, had no hotel and restaurant department during the base period and who, therefore, under the provisions of the regulation, cannot now enter the business of selling fabricated cuts to purveyors of meals. It appears to us that the Administrator had a rational basis for imposing the restrictions objected to, and that we could not as a reviewing court find them to be arbitrary or capricious. *However, we make no ruling on the point because, in our opinion, we have no jurisdiction to pass upon this particular objection.* Even

if the 'grandfather clause' were struck out of the definition of hotel supply houses in §1364.455(b), complainant would still be forbidden to sell fabricated cuts to purveyors of meals by force of the quota restrictions in §1364.415, which was promulgated by the Administrator pursuant to delegated authority derived from the Second War Powers Act, 50 U.S.C.A. Appendix §631 et seq., and not under the authority conferred upon the Administrator by the Emergency Price Control Act. *The jurisdiction of this court is limited to review of regulations or orders issued under §2 of the Emergency Price Control Act, 56 Stat. 31, 50 U.S.C.A. Appendix §902.*" (Emphasis supplied.)

(3) In the majority opinion in the instant case it is said:

> "The crux of this case was primarily an attack upon the validity of a directive promulgated under the authority of the Emergency Price Control Act."

Obviously, since the directive in question (OES Directive No. 41) was issued by the Stabilization Director and not by the Price Administrator, this is to hold that the Stabilization Act of 1942, as amended, (56 Stat. 765; 50 U.S.C.A., Appendix, Sections 961-971) is an integral part of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U.S.C.A., Appendix, Sections 901-946), and that directives issued by the Stalibilization Director upon the authority of the Stabilization Act of 1942, as amended, are price regulations under Section 2 of the Emergency Price Control Act of 1942, as amended. This is in conflict with the decision of the Sixth Circuit in *Blalack v. United States,* 154 Fed. (2nd) 591, wherein it was held that the validity of a regulation promulgated by the Stabilization Director upon the authority of the Stabilization Act of 1942, as amended, was a justiciable matter within the blanket jurisdiction of district courts and was not within the exclusive jurisdiction of the Emergency Court of Appeals under Section 204 of the Emergency Price Control Act of 1942,

as amended. In thus holding that the Stabilization Act was not an integral part of the Emergency Price Control Act, the Sixth Circuit said:

> "From an examination of the language of the Price Control and Stabilization Acts, and of the circustances surrounding their enactment, we are convinced that both contentions are erroneous. The Emergency Price Control Act, enacted January 30, 1942, to check 'speculative and excessive price rises, prices dislocations, and inflationary tendencies', was directed at commodity prices, including agricultural commodities and rent, and is found in 56 Stat. 23 et seq., and is codified in Title 50, U.S.C.A. Appendix, Sections 901-946, inclusive. Administration was vested in an 'Office of Price Administration' under the direction of a 'Price Administrator' who was referred to in the Act as the 'Administrator'. The Price Administrator was authorized under Sec. 2 of the Act of issue regulations or orders, establishing maximum prices and rents. Secs. 203 and 204 prescribed procedure for determining the validity of price regulations issued by the Administrator under Sec. 2, by protest to and hearing before the Administrator, whose determination was reviewable on complaint to the Emergency Court of Appeals with certiorari to the Supreme Court. The Emergency Court was, on the filing of a complaint before it, given 'exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding'.
>
> "Acts in violation of regulations or orders or price schedules were made unlawful and punishable by fine and imprisonment. Jurisdiction of criminal proceedings was vested in the District Courts. *It is plain that the Emergency Price Control Act was concerned with the office and duties of the Office of Price Administrator and with no other.*"

* * * *

"*Broadly speaking, the Price Control Act was enacted for the control of rents and commodity prices with authority vested in the Administrator.* In the Stabilization Act, the President, not the Administrator, was vested with vast powers for stabilizing prices, wages and salaries. The President was given power to suspend certain sections of the Price Control Act and another section thereof was amended. In Sec. 7(b), the Price Administrator, with certain immaterial reservations, was given the same powers with respect to functions which might be delegated to him under the Stabilization Act, as he had under the Price Control Act; *but there was not one word to indicate that practices and procedures set up by the Price Control Act applied to the powers to be exercised by the President or any other officer to whom he might delegate that power.*

"No procedure was set up for making protests or complaints as to orders or regulations that the President or other subordinate might issue and in the absence of any express provision in the Stabilization Act, it is inconceivable that a person would be permitted to protest to the Administrator a regulation issued by the President or by someone holding power under him. And yet under Sec. 204 (a) of the Price Control Act, such a protest to the Administrator was a prerequisite to filing a complaint with the Emergency Court of Appeals.

"(4) There was a penalty provision in the Stabilization Act, Sec. 11, but no express vesting of jurisdiction in the District Court, as in the Price Control Act, *a further indication that there was blanket jurisdiction in the District Courts of all matters arising under the Stabilization Act, including challenges to the validity of regulations.*

"Our conclusion is, that the Yakus and Shrier cases do not apply here, *and that the validity of the*

challenged regulation may be considered in this proceeding." (Emphasis supplied).

(4) The question as to whether Section 2(m) of the Emergency Price Control Act of 1942, as amended, vests federal district courts with jurisdiction to pass upon the validity of price regulations which assume to impose forfeitures and penalties in addition to those prescribed by Congress is an important question of federal law which has not been, but should be, settled by this court.

(5) What Congress intended by Section 2(m) of the Emergency Price Control Act of 1942, as amended, presents a federal question that has been decided by the lower court in a way that is in conflict with applicable and controlling decisions of this court.

(6) The decision in the instant case, when read with the decision of the Emergency Court of Appeals in *Standard Kosher Poultry, Inc., v. Clark,* 163 Fed. (2nd) 430, as it must be, deprives plaintiff, and all other members of the class for which he sues, of due process of law, in violation of the Fifth Amendment to the Constitution of the United States, since they can neither protest the withholding of their subsidy payments and then complain to the Emergency Court of Appeals, nor can they bring action for a declaratory judgment or otherwise be heard in a District Court of the United States or any other duly constituted tribunal. In so holding the lower court has decided an important question of federal law which has not been, but should be, settled by this court.

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SUPPORTING BRIEF

I.

TIME

This petition for writ of certiorari is timely because the opinion sought to be reviewed was filed on December 17, 1947, and petition for rehearing was filed in due time, pursuant to Rule 24 of the lower court, and considered and denied on January 15, 1948.

Sec. 350, Title 28, U.S.C.A., Act of Feb. 13, 1925.

Citizens Bank v. Opperman, 249 U. S. 448, 63 L. Ed. 701.

National Labor Relations Board v. Mackey Radio and Telegraph Co., 304 U. S. 333, 82 L. Ed. 1381.

Department of Banking, State of Nebraska, as Receiver, etc., v. Louis H. Pink, Superintendent of Insurance of the State of New York, etc., 317 U. S. 264, 87 L. Ed. 354.

II.

REASONS (1), (2), AND (3).

The reasons for granting the writ because the decision of the lower court is in conflict with the three specified decisions of the Emergency Court of Appeals and with the one specified decision of the United States Circuit Court of Appeals, Sixth Circuit, as stated in paragraphs (1), (2), and (3) of the petition, do not call for a supporting brief. It is manifest upon the face of these three statements of reasons why the writ should be granted that the decision of the lower court in the instant case is in conflict with those three decisions of the Emergency Court of Appeals and with the one decision of the Sixth Circuit. Since conflict in the decisions must be conceded, argument ceases, and it remains only for this court to say whether or not it will grant certiorari and resolve the uncertainty arising from such conflict in the decisions.

III.

REASON (4)

Whether or not an administrative officer or agency has transcended his administrative function by adding to the penalites prescribed by Congress for the law which it has written is always an important question of federal law which should be settled by this court. In the recent case of *Stuart & Bro., Inc., v. Bowles,* 322 U. S. 398, 88 L. Ed. 1350, this court said:

> "We agree that it is for Congress to prescribe the penalties for the laws which it writes. *It would transcend both the judicial and administrative function to make additions to those which Congress has placed behind a statute.* U. S. v. 200 Barrels of Whiskey, 94 U. S. 571, 24 L. Ed. 491; Campbell v. Galeno Chemical Co., 281 U. S. 599, 74 L. Ed. 1063, 50 S. Ct. 412; Wallace v. Cullen, 298 U. S. 229, 80 L. Ed. 1157, 56 S. Ct. 753."

Therefore, when Congress, for the declared purpose of preventing "the use of the powers of agencies and officers of the Government for the purpose of imposing unauthorized conditions or penalties", (See Report of Senate Committee on Banking and Currency, presenting the 1944 Amended Emergency Price Control Act for approval.) wrote into the Emergency Price Control Act Section 2(m), the jurisdiction thereby conferred upon district courts became and is an important question of federal law which should be settled by this court.

IV.

REASON (5)

In presenting the 1944 amended Emergency Price Control Act for approval, the Chairman of the Senate Committee on Banking and Currency stated that for the purpose of preventing the use of the powers of agencies and officers of the Government "for the purpose of imposing unauthorized conditions or penalties", the following amendment had been incorporated:

"*(m)* No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, *shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed.* Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee may petition the district court of the district in which he resides or has his place of business *for an order or a declaratory judgment to determine whether any such action of failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief.* The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case." (Emphasis supplied.)

What Congress intended by this 1944 amendment to the Emergency Price Control Act presents a federal question that has been decided by the lower court in a way that is in conflict with applicable and controlling decisions of this court. The language used by Congress to express its legislative intent is clear and unambiguous. Since there is no ambiguity, there is no room for construction, and Congress will be deemed to have meant exactly what it said, because "the province of construction lies wholly within the domain of ambiguity." *Hamilton v. Rathbone,* 175 U. S. 414, 44 L. Ed. 219. And to the same effect are

The Board of County Commissioners of the County of Lake v. Rollins, 130 U. S. 662, 32 L. Ed. 1060;

United States v. Standard Brewery, 251 U. S. 210, 64 L. Ed. 229;

Caminetti v. United States, 242 U. S. 470, 61 L. Ed. 442;

Mackenzie v. Hare, 239 U. S. 299, 60 L. Ed. 279;

Osaka Shosen Kaisha Line v. United States, 300 U. S. 98, 81 L. Ed. 532;

Crooks v. Harrelson, 282 U. S. 55, 75 L. Ed. 156;

Russell Motor Car Co. v. United States, 261 U. S. 514, 67 L. Ed. 778;

George Van Camp and Sons Co. v. American Can Co., 278 U. S. 245, 73 L. Ed. 311.

The decision of the lower court in the instant case is in conflict with these applicable and controlling decisions of this court.

V.

REASON (6)

Reason (6) does not require argument to demonstrate its verity. This court will take judicial notice of the fact that if Section 2(m) of the Emergency Price Control Act of 1942, as amended, did not vest the District Court with jurisdiction of the subject-matter of the instant case, as the lower court held, and upon expiration of that Act on June 30, 1947, the jurisdiction of the Emergency Court of Appeals, as that court has held, "was limited to civil and criminal enforcement proceedings predicated upon past violations alleged to have been committed while the regulation was in effect," then there is no judicial tribunal open to the petitioner, and he and all other members of the class

of slaughterers in question are barred from their day in court, and thus denied due process of law in violation of the Fifth Amendment of the Constitution. In *Baker, Eccles & Co.,* 242 U. S. 394, 61 L. Ed. 386, this court said:

> "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard. Louisville & N. R. Co. v. Schmidt, 177 U. S. 230, 236, 41 L. ed. 747, 750, 20 Sup. Ct. Rep. 620; Simon v. Craft, 182 U. S. 427, 436, 45 L. ed. 1165, 1170, 21 Sup. Ct. Rep. 836; Grannis v. Ordean, 234 U. S. 385, 394, 58 L. ed. 1363, 1368, 34 Sup. Ct. Rep. 779."

The fact that in the instant case the opportunity to be heard is denied by reason of a conflict in the decisions of separate federal judicial tribunals, the United States Circuit Court of Appeals, Tenth Circuit, and the Emergency Court of Appeals, cannot deprive petitioner of his constitutional right to due process of law under the Fifth Amendment. In *Brinkerhoff-Faris Trust & Savings Co. v. Hill, Treasurer,* 281 U. S. 673, 74 L. Ed. 1107, this court held:

> "A violation of the due process clause may be accomplished by the state judiciary in the course of construing an otherwise valid state statute."

In the body of the opinion, at page 682 of the official report, this court said:

> "But while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it. Compare Postal Teleg. Cable Co. v. Newport, 247 U. S. 464, 475, 476, 62 L. Ed. 1215, 1229, 1221, 38 Sup. Ct. Rep. 566."

The rule governing acts of the federal judiciary must be the same under the Fifth Amendment, because the guarantee of due process under that amendment extends to federal action through the judicial as well as through the legislative, executive, or administrative branches of the federal government.

Respectfully submitted,

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OPPOSITION

BRIEF

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 686

BEN SAMETT, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinions of the United States Circuit Court of Appeals for the Tenth Circuit (R. 11–16) are reported at 165 F. 2d 605. The United States District Court for the District of Colorado did not render an opinion.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Tenth Circuit was entered on December 17, 1947 (R. 16–17). A petition for rehearing filed by petitioner (R. 23–38) was denied by order of that court dated January 15,

1948 (R. 39). The petition for a writ of certiorari was filed on March 22, 1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the district courts of the United States have jurisdiction, in proceedings to review the denial of meat subsidies by Reconstruction Finance Corporation, to determine the validity of the subsidy regulations.[1]

STATUTES AND EXECUTIVE ORDER INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. App. 901 *seq.*), the Stabilization Act of 1942, as amended (*id.* 961 *seq.*), and Executive Order 9250 (7 F. R. 7871) are set forth in the Appendix, *infra,* pp. 21–26.

STATEMENT

This suit was instituted by a complaint filed by petitioner in the United States District Court for the District of Colorado on May 1, 1947, on behalf of himself and a class of an undetermined number of similarly situated livestock slaughterers

[1] This question involves the subsidiary question whether those regulations were issued pursuant to Section 2 (e) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. App., Supp. V, 902 (e)).

claiming and allegedly entitled to subsidy payments which respondent was withholding (R. 1–6). It was alleged that payment was being withheld "although all conditions precedent to such payment have been duly performed and have occurred," because of the failure by petitioner and the other claimants to comply with "certain conditions, forfeitures, and penalties not authorized by the provisions of the applicable acts of Congress or lawful regulations issued thereunder, but arbitrarily and capriciously promulgated and imposed by the former Economic Stabilization Director and the former Price Administrator acting in collaboration with it, and in violation of the congressional mandate set forth in Section 2 (m) of the Emergency Price Control Act, as amended * * *" (R. 3). Specifying "the conditions, forfeitures, and penalties" to which he objected, petitioner requested that they be declared "illegal, null, and void"; that he be awarded damages against respondent for the sum of $22,660, the subsidies allegedly owing to him, and for the wrongful withholding of that amount from December 1, 1946; that such judgment be decreed a lien upon all the meat subsidy moneys appropriated by Congress and now in respondent's possession or under its control; and that provision be made for entering judgment on the claims of the other members of the class who elected to participate in the prosecution of the suit (R. 4–6). Jurisdiction of the court was in-

voked under Section 2 (m) of the Emergency Price Control Act, as amended, *infra*, p. 22 (R. 1).

On respondent's motion to dismiss (R. 6–7), the district court, on July 23, 1947, ordered the complaint dismissed "upon the grounds that this court does not have jurisdiction to pass upon the validity of the Regulations mentioned in plaintiff's complaint, and the court is of the opinion that Section 204 (d) of the Emergency Price Control Act of 1942 is not so amended by Sub-section (m) of the Amendment of Section 2 of the said Emergency Price Control Act to grant this Court jurisdiction to pass upon the validity of said Regulations" (R. 7–8). On appeal to the United States Circuit Court of Appeals for the Tenth Circuit (R. 8), the judgment of dismissal was affirmed, one judge dissenting (R. 16–17). The majority of the circuit court of appeals were of the view that the exclusiveness of the jurisdiction vested by Sections 204 (a) and (d) of the Emergency Price Control Act of 1942 (50 U. S. C. App., Supp. V, 904 (a) and (d)) in the Emergency Court of Appeals and this Court, to review and to set aside regulations, orders, and price schedules promulgated pursuant to Section 2 of that Act (50 U. S. C. A. App. 902), had not been abolished by the enactment of Section 2 (m), and that the district courts of the United States, therefore, had no jurisdiction in such matters (R. 11–14). Circuit Judge

Phillips, however, dissented, urging that Section 2 (m) constituted an express grant of such jurisdiction to the district courts; that, in any event, the jurisdiction of the Emergency Court of Appeals had been terminated on June 30, 1947, with the termination of the Price Control Act and was, thus, no longer present when the complaint was filed in this proceeding; and that accordingly the complaint should not have been dismissed (R. 14–16). A petition for rehearing having been denied (R. 39), the mandate of the circuit court of appeals, in accordance with its opinion and judgment, was issued to the district court on January 26, 1948 (R. 39).

The genesis of petitioner's claim, though not disclosed in the transcript, is readily apparent from the official records of the wartime subsidy program.[2] Section 2 (e) of the Emergency Price Control Act of 1942 (50 U. S. C. App., Supp. V, 902 (e), see *infra,* p. 21) authorized the institution of programs for subsidy payments to domestic producers of commodities in short supply, where such payments were deemed necessary. They became necessary in the case of livestock

[2] For an account of the livestock slaughter subsidy payment program, its origin, and the mechanics of its operation, see *Armour & Co.* v. *Bowles*, 148 F. 2d 529 (E. C. A.), certiorari denied, 325 U. S. 871, and *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525 (E. C. A.), certiorari denied, 329 U. S. 737.

slaughterers, when, with the enactment of the Stabilization Act of 1942 (Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. App., Supp. V, 961 *seq.*), the President issued Executive Order 9250 (7 F. R. 7871; 50 U. S. C. App., Supp. V, 901 note) which provided, among other things, for stabilization of the prices of "agricultural commodities and of commodities manufactured or processed in whole or substantial part from any agricultural commodity * * *, so far as practicable, on the basis of levels which existed on September 15, 1942 * * *."

In 1943, in order to carry out that stabilization policy, the Office of Price Administration reduced the maximum prices for certain meat and pork products approximately ten per cent. The Economic Stabilization Director, to whom the powers and duties vested in the President by the Stabilization Act had been delegated, thereupon determined that because of this price reduction and in order to assure their maximum production for civilian, military, and lend-lease requirements, it would be necessary to pay subsidies to the processors of such products. Since the President had designated meat and pork products as strategic and critical materials, within the meaning of Section 5d of the Reconstruction Finance Corporation Act (15 U. S. C. 606b), only one of the corporations organized under that section was qualified to pay subsidies on their production (Section 2

(e) of the Emergency Price Control Act of 1942, 50 U. S. C. App., Supp. V, 902 (e), see *infra*, p. 21), and the Economic Stabilization Director, therefore, directed the Federal Loan Administrator to cause such action to be taken. This the latter did, making the appropriate determinations under Section 2 (e) and requesting Defense Supplies Corporation to undertake the program. Regulation No. 3 of that Corporation, effective on June 7, 1943, put the livestock slaughter payment program into operation (8 F. R. 10826).

From time to time thereafter, the Economic Stabilization Director issued directives to Defense Supplies Corporation with respect to this subsidy program, among them Directive No. 41 and amendments thereto (32 CFR, 1945 and 1946 Supps., 4004.1 note; Pike and Fischer, *OPA Price Service, Food,* vol. 1, pp. 1272 *seq.*). Regulation No. 3 of Defense Supplies Corporation, amended in several respects, was subsequently revised, again amended in its revised form from time to time, and, after the dissolution of the corporation and the absorption of its remaining duties by its parent, Reconstruction Finance Corporation,[3] it was eventually adopted as Regulation No. 10 of that agency (see 32 CFR, 1945 Supp., 7003.1 *seq.*). Petitioner seeks to have certain provisions of Di-

[3] The authority, functions, and property of the Defense Supplies Corporation were transferred to respondent by the Act of June 30, 1945, c. 215, 59 Stat. 310 (see 15 U. S. C., Supp. V, 606b note).

rective No. 41 and Revised Regulation No. 3 (that is, R. F. C. Regulation No. 10) nullified (R. 4–5). These provisions must be read in their entirety and in the context of the entire body of the regulations to be understood. In short, those in Directive No. 41 direct Reconstruction Finance Corporation to declare invalid or withhold, in whole or in part, subsidy claims where the Price Administrator or the Secretary of Agriculture certifies that the applicant has violated the regulations, orders, or price schedules of those agencies, has paid more than the permissible costs for livestock slaughtered, has slaughtered livestock in excess of his authorized quotas, or has failed to set aside or deliver the quantities required for Government procurement by War Food Administration Orders. And those in Revised Regulation No. 3 (R. F. C. Regulation No. 10) and its amendments implement these directives. All the conditions assailed seem designed to preclude payment of subsidies to claimants who have, in one way or another, disregarded the interrelated programs adopted by the several government agencies concerned with the control of the production and distribution of meat and pork products during wartime in order to prevent an inordinate inflation in the pricing of such commodities.

The livestock slaughter payment program terminated on October 14, 1946; such rights and liabilities as may have arisen therefrom, however,

remained in effect. See 12 F. R. 66. The Emergency Price Control Act and all regulations, orders, price schedules, and requirements extant thereunder, except so far as they affected rights and liabilities occurring prior to that date, terminated on June 30, 1947 (Act of July 25, 1946, c. 671, § 1, 60 Stat. 664, 50 U. S. C. A. App. 901 (b)).

ARGUMENT

This is another in the series of cases involving the wartime livestock slaughter subsidy payment program, in three of which this Court has already denied certiorari. *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 329 U. S. 737; *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 329 U. S. 737; *Illinois Packing Co.* v. *Henderson*, 329 U. S. 783, rehearing denied, 329 U. S. 831.

The district court dismissed the complaint in this proceeding because, in its view, the enactment of Section 2 (m) of the Emergency Price Control Act of 1942 (*infra*, p. 22), had not invested federal district courts with the jurisdiction, theretofore exclusively conferred on the Emergency Court of Appeals and this Court, to consider and determine the validity of regulations or orders issued pursuant to Section 2 of the Act (50 U. S. C. A. App. 902). The court below affirmed the district court's ruling. Recent decisions of the circuit courts of appeal for the First and Seventh Circuits are in accord. *Atlantic*

Meat Co. v. *Reconstruction Finance Corp.*, 166 F. 2d 51 (C. C. A. 1); *Illinois Packing Co.* v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. C. A. 7), affirming *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8 (N. D. Ill.). We submit that the judgment below is clearly correct and that there is no warrant for issuance of a writ of certiorari.

1. Section 204 (d) of the Emergency Price Control Act of 1942 (50 U. S. C. App., Supp. V, 924 (d), see *infra*, p. 23) vests in the Emergency Court of Appeals, and in this Court, upon review of the Emergency Court's judgments, "exclusive jurisdiction to determine the validity of any regulation or order issued under section 2 * * * and of any provision of any such regulation, order * * *", and provides that no other court shall have jurisdiction or power "to consider the validity of any such regulation, order * * *." The compelling considerations which inspired that exclusive grant of jurisdiction have been reviewed by this Court, and the constitutionality of the grant affirmed. *Lockerty* v. *Phillips*, 319 U. S. 182; *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503.

The subsidy regulations here in question were issued under Section 2 (e) of the Price Control Act (50 U. S. C. App., Supp. V, 902 (e), see *infra*, p. 21). *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 526–528 (E. C. A.),

certiorari denied, 329 U. S. 737; *Illinois Packing Co.* v. *Snyder,* 151 F. 2d 337, 338, 339 (E. C. A.); *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554, 556–558 (E. C. A.); *Illinois Packing Co.* v. *Defense Supplies Corp.,* 57 F. Supp. 8, 10–11 (N. D. Ill.), affirmed *sub. nom. Illinois Packing Co.* v. *Reconstruction Finance Corp.,* 156 F. 2d 875 (C. C. A. 7). Accordingly, unless the efficacy of Section 204 (d) has been impaired, as petitioner contends, by the enactment, in 1944, of Section 2 (m), *infra,* p. 22, consideration by the district courts of the validity of those regulations or of any of their provisions is barred.

Nor can petitioner escape the impact of Section 204 (d) by seeking to impute to some of the regulatory provisions which he challenges, an origin other than Section 2 (e) of the Price Control Act (see Pet. 6–7). As the Emergency Court of Appeals has made clear, the enactment of the Stabilization Act of 1942 (56 Stat. 765, 50 U. S. C. App., Supp. V, 961 *seq.*) and the promulgation thereunder of Executive Orders 9250 (7 F. R. 7871, 50 U. S. C. App., Supp. V, 901 note) and 9328 (8 F. R. 4681, 50 U. S. C. App., Supp. V, 901 note) supplied no new source of power to make subsidy payments. "* * * the authority to formulate and administer subsidy programs remained where it had been placed by § 2 (e) of the Emergency Price Control Act; with this qualification, however, that the Price Administrator, the Federal

Loan Administrator, and Defense Supplies Corporation, were obliged to conform to the general line of policy laid down in directives of the Economic Stabilization Director pursuant to his overriding authority as conferred upon him by the Executive Order." *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 155 F. 2d 525, 527–528, certiorari denied, 329 U. S. 737; see, also, in accord, cases cited, *supra*, pp. 10–11. Executive Order 9250 merely authorized the Economic Stabilization Director to "direct any Federal department or agency * * * to use its authority to subsidize" in specified circumstances, providing that "the administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director." 7 F. R. 7871, 7873. Neither the Stabilization Act nor Executive Order 9328 contained anything on the subject.

Petitioner's endeavor to avoid the jurisdictional limitations of Section 204 (d) by characterizing certain of the provisions assailed as "quota and distribution regulations" (Pet. 6–7) is equally unavailing. Pursuant to Directive No. 41 of the Economic Stabilization Director, the payment of subsidies to livestock slaughterers was conditioned by Revised Regulation No. 3 of Defense Supplies Corporation (R. F. C. Regulation No. 10) on the

applicants' compliance with certain limitations on the purchase and slaughtering of livestock and the resale of meat and pork products. But petitioner, in this proceeding, does not ask for a review of such production and distribution restrictions; indeed there is no indication or claim that those restrictions were in any sense compulsory on petitioner. Rather, what is complained of here is the propriety of conditioning subsidy payments on adherence to such restraints; in short, a subsidy regulation, not a "quota" or "distribution" regulation, is the subject matter of this suit.

2. Petitioner must, therefore, depend solely on Section 2 (m) of the Emergency Price Control Act of 1942, *infra,* p. 22, to sustain the jurisdiction of the district court. Such reliance is, however, misplaced. That subsection of the Price Control Act, added by the Act of June 30, 1944 (c. 325, Title I, § 102, 58 Stat. 632), prohibits any agency, department, officer, or employee of the Government from imposing unlawful conditions or penalties in the payment of subsidies relating to the production or sale of agricultural commodities and provides that persons aggrieved by such action may petition the district courts for relief. An examination of the letter of the statute and a consideration of its history in Congress disclose that it was not designed to and does not

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subject subsidy regulations, such as those here involved, to the review of the federal district courts.[4]

a. According to its express terms, Section 2 (m), *infra*, p. 22, comes into play only in cases involving the payment of sums relating to "the production or sale of agricultural commodities." The regulations here in question, however, provide for subsidy payments on the production and sale of beef, veal, pork, lamb, and mutton; these are commodities processed or manufactured in whole or substantial part from agricultural commodities, but they are not agricultural commodities. *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 166 F. 2d 51 (C. C. A. 1); *Superior Packing Co.* v. *Clark*, 164 F. 2d 343, 348–349 (E. C. A.); *Bowles* v. *Superior Packing Co.*, 63 F. Supp. 12, 16–17 (D. Minn.), affirmed, 156 F. 2d 193 (C. C. A. 8), certiorari denied, 329 U. S. 788; *United States* v. *Charney*, 50 F. Supp. 581 (D. Mass.); see, also, *Dowling Bros. Distilling Co.* v. *United States*, 153 F. 2d 353, 358 (C. C. A. 6),

[4] Petitioner, in challenging the refusal of the court below to apply Section 2 (m) to his case, asserts that its provisions are so clear and unambiguous that resort to legislative history is unwarranted (Pet. 3, 13–14). The unanimity of the decisions rejecting the reading petitioner urges for the section demonstrates that the construction of the statute is clear, but against petitioner. In any event, recourse to legislative history is by no means improper even if the statute appears clear on superficial examination. *United States* v. *American Trucking Associations*, 310 U. S. 534, 543–544; *United States* v. *Dickerson*, 310 U. S. 554, 561–562; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479.

certiorari denied *sub nom. Gould* v. *United States,* 328 U. S. 848; *Taub* v. *Bowles,* 149 F. 2d 817, 823 (E. C. A.), certiorari denied, 326 U. S. 732; *Bowles* v. *American Brewery,* 146 F. 2d 842, 845 (C. C. A. 4); *Bowles* v. *Sunshine Packing Corp.,* 59 F. Supp. 164, 166 (W. D. Pa.). The distinction between "agricultural commodities," that is commodities produced on a farm and sold by a farmer in their raw, natural or unprocessed state (the live steer or hog), and commodities produced from them (beef cuts, pork products, etc.) was drawn when the Price Control Act was first enacted. See, *e. g.* Sections 2 (e), 2 (i), 3 (c), 3 (i) (50 U. S. C. App., Supp. V, 902 (e), 902 (i), 903 (c), 903 (i)); see, also, Section 3 of the Stabilization Act of 1942, 50 U. S. C. App., Supp. V, 963. That distinction was carried over into Section 2 (m) when it was added to the Act. As the First Circuit Court of Appeals notes in *Atlantic Meat Co.* v. *Reconstruction Finance Corp.,* 166 F. 2d 51, 55, the legislative history makes it plain that, in enacting Section 2 (m), Congress had in mind the farmer rather than the processor of farm products. See Sen. Rep. No. 922, 78th Cong., 2d sess., p. 9; Hearings before Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–475; 90 Cong. Rec. 5291–5292.

b. There is a further reason why petitioner gains nothing from reliance on Section 2 (m). Even if subsidy payments on agricultural commodities were involved, the district courts would

not have jurisdiction. For, Section 2 (m) did not so amend Section 204 (d) as to deprive the Emergency Court of Appeals of the exclusive jurisdiction to consider the validity of the subsidy regulations, issued pursuant to Section 2 of the Price Control Act. That is the holding not only of the court below, but also of the only other courts which have ruled on the question. *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 166 F. 2d 51, 56–57 (C. C. A. 1); *Illinois Packing Co.* v. *Defense Supplies Corp.*, 57 F. Supp. 8 (N. D. Ill.), affirmed *sub nom. Illinois Packing Co.* v. *Reconstruction Finance Corp.*, 156 F. 2d 875 (C. C. A. 7). And it is confirmed by the history of the legislation. The Senate committee which recommended the amendment specifically stated that the exclusive jurisdiction of the Emergency Court of Appeals in cases concerning the validity of regulations would remain unchanged (see Sen. Rep. No. 922, 78th Cong., 2d sess., p. 58), and statements made both during the hearings before the committee and when the bill was discussed on the floor of the Senate demonstrate that the new subsection was not designed to make such a far-reaching change. See Hearings before Committee on Banking and Currency on S. 1764, 78th Cong., 2d sess., pp. 464–471; 90 Cong. Rec. 5291–5292. Moreover, when, in 1945, Congress legislated to relieve livestock slaughterers from inequitable liabilities to repay extra subsidy payments for which they had not

been eligible, it clearly indicated that the Emergency Court of Appeals still remained the proper forum for the review of the subsidy regulations.[5] To hold that Section 2 (m) had abolished the exclusiveness of the Emergency Court's jurisdiction would be to imply in that subsection a repealer, in part, of Section 204 (d) (50 U. S. C. App., Supp. V, 924 (d)), a course traditionally frowned upon by this Court. *Georgia* v. *Pennsylvania R. Co.*, 324 U. S. 439, 456–457; *United States* v. *Madigan*,

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[5] The statutory provision referred to is Section 2 of the Act of June 23, 1945, c. 193, 59 Stat. 260, 261, which reads as follows:

"Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligation to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Provided*, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe."

300 U. S. 500, 506. Only last term, this Court denied a petition that it review the assertion by the Emergency Court of its jurisdiction to consider the validity of the livestock slaughter subsidy regulations, notwithstanding the provisions of Section 2 (m). *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 329 U. S. 737, denying certiorari 155 F. 2d 533 (E. C. A.).

3. Notwithstanding the views of Circuit Judge Phillips (R. 16) and of petitioner (Pet. 4, 5, 10, 14–16), the termination of the Emergency Price Control Act of 1942, on June 30, 1947, did not end the jurisdiction of the Emergency Court of Appeals in proceedings such as the present one. Section 1 (b) of the Act, as amended (50 U. S. C. A. 901 (b), *infra*, p. 21) provides that "as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act * * * shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense." The rights to the subsidy payments claimed by petitioner, such as they may be, apparently accrued on December 1, 1946 (R. 5). Accordingly, so far as this proceeding is concerned, the provisions of the Act and, thus, the jurisdiction of the Emergency Court of Appeals are still in effect. Cf. *Fleming* v. *Mohawk Co.*, 331 U. S. 111, 119; see Brief for the Administra-

tor, *Woods* v. *Hills*, No. 437, this Term.[6] Tentative suggestions made by the Emergency Court, in the summer and fall of 1947, in *Standard Kosher Poultry, Inc.* v. *Clark*, 163 F. 2d 430 (E. C. A.) and *Talbot* v. *Woods*, 164 F. 2d 493 (E. C. A.), that the jurisdiction preserved to it by Section 1 (b) might be limited to that ancillary to civil and criminal enforcement proceedings have apparently been reconsidered and rejected. *Fleet-Wing Corp.* v. *Clark*, 166 F. 2d 145 (February, 1948). And the Emergency Court has assumed jurisdiction in and set down for hearing on the merits, at least half a dozen proceedings which, like the instant suit, assail the validity of subsidy regulations.[7]

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[6] The provision in Public Law 271, 80th Cong., 1st Sess., page 10, amending the first sentence of Section 204 (e) of the Emergency Price Control Act, referred to at the argument in *Woods* v. *Hills*, clearly does not affect this case, inasmuch as Section 204 (e) is concerned only with the ancillary jurisdiction of the Emergency Court of Appeals over cases certified to it by courts in which civil or criminal enforcement proceedings are pending. The primary jurisdiction of the Emergency Court defined by Section 204 (d) of the Act is not affected by that amendment. This primary jurisdiction remains in effect, however, only in so far as rights or liabilities incurred prior to the termination of the statute are involved. Cf. *Sikora Realty Corp.* v. *Tighe E. Woods*, No. 563, this Term, certiorari denied March 15, 1948.

[7] Four of these proceedings have already been heard and are awaiting decision. All name Reconstruction Finance Corporation as defendant. The complainants are Sidney Genser, d/b/a Imperial Meat Packing Co., No. 439, filed October 23, 1947; Earl C. Gibbs, Inc., No. 442, filed November 12, 1947; United Beef Co., No. 456, filed December 10, 1947; The Wm. Schliederberg-T. J. Kindle Co., No. 447, filed November 17, 1947; Same, No. 454, filed December 1, 1947; and Belle City Packing Co., No. 445, filed November 14, 1947.

4. Petitioner seeks to put in issue here certain facets of the livestock slaughter payment program. That program terminated on October 14, 1946 (see 12 F. R. 66). The Emergency Price Control Act of 1942, pursuant to the authority of which it was instituted and the subsidy payments made, terminated on June 30, 1947 (Act of July 25, 1946, c. 671, § 1, 60 Stat. 664, 50 U. S. C. A., App. 901 (b)). There is little, if any, likelihood, therefore, that a new subsidy program will be adopted. Although controversies such as this one, involving the right of petitioner to payments for past operations, apparently survive the expiration of the old program and the Price Control Act, the problem they present is not of sufficient present importance to warrant further review. Cf. *Earl C. Gibbs, Inc.* v. *Defense Supplies Corp.*, 329 U. S. 737; *Atlantic Meat Co.* v. *Reconstruction Finance Corp.*, 329 U. S. 737; *Illinois Packing Co.* v. *Henderson*, 329 U. S. 783, rehearing denied, 329 U. S. 831.

CONCLUSION

For the foregoing reasons, it is respectively submitted that the petition for a writ of certiorari should be denied.

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APRIL 1948.

APPENDIX

1. The pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765; 58 Stat. 632; 59 Stat. 306; 60 Stat. 664; 50 U. S. C. A. App. 901, *seq.*) are as follows:

A. Sec. 1 (b); 50 U. S. C. App. 901 (b):

> The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

B. Sec. 2 (e); 50 U. S. C. App., Supp. V, 902 (e):

> Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing

year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided,* That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d * * *.

C. Sec. 2 (m); 50 U. S. C. App., Supp. V, 902 (m):

No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or

agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

D. Sec. 204 (d); 50 U. S. C. App., Supp. V, 924 (d):

Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C.,

1934 edition, Title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

2. The Stabilization Act of 1942 (56 Stat. 765; 50 U. S. C. App., Supp. V, 961 *seq.*):

Sec. 1; 50 U. S. C. App., Supp. V, 961:

In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in

this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities * * *.

Sec. 7 (b); 50 U. S. C. App., Supp. V, 967 (b):

All provisions (including prohibitions and penalties) of the Emergency Price Control Act of 1942 which are applicable with respect to orders or regulations under such Act shall, insofar as they are not inconsistent with the provisions of this Act, be applicable in the same manner and for the same purposes with respect to regulations or orders issued by the Price Administrator in the exercise of any functions which may be delegated to him under authority of this Act.

3. Executive Order No. 9250 (7 F. R. 7871, 50 U. S. C. App., Supp. V, 901 note):

Title I, Sec. 3:

The Director, with the approval of the President, shall formulate and develop a comprehensive national economic policy relating to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters—all for the purpose of preventing avoidable increases in the cost of living, cooperating in minimizing the unnecessary migration of labor from one business, industry, or region to another, and facilitating the prosecution of the war. To give effect to this comprehensive national economic policy the Director shall have power to issue directives on policy to the Federal departments and agencies concerned.

Title V, Sec. 2:

The Director may direct any Federal department or agency including, but not limited to, the Department of Agriculture (including the Commodity Credit Corporation and the Surplus Marketing Administration), the Department of Commerce, the Reconstruction Finance Corporation, and other corporations organized pursuant to Section 5d of the Reconstruction Finance Corporation Act, as amended, to use its authority to subsidize and to purchase for resale, if such measures are necessary to insure the maximum necessary production and distribution of any commodity, or to maintain ceiling prices, or to prevent a price rise inconsistent with the purposes of this Order.

U. S. GOVERNMENT PRINTING OFFICE: 1946